

Office - Supreme Court, U.S.

FILED

JAN 29 1958

JOHN T. FEY, Clerk

Nos. —

32

In the Supreme Court of the United States

OCTOBER TERM, 1957

UNITED STATES OF AMERICA, APPELLANT

v.

A & P TRUCKING COMPANY

UNITED STATES OF AMERICA, APPELLANT

v.

HOPLA TRUCKING COMPANY

**APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW JERSEY**

JURISDICTIONAL STATEMENT

J. LEE RANKIN,

Solicitor General,

RUFUS D. McLEAN,

Acting Assistant Attorney General,

BEATRICE ROSENBERG,

Attorney,

Department of Justice, Washington 25, D. C.

INDEX

	Page
Opinions below	1
Jurisdiction	1
Statutes involved	2
Question presented	3
Statement	3
The question is substantial	4
Conclusion	7
Appendix	8

CITATIONS

Cases:

United States v. Adams Express Co., 229 U. S. 381..... 5, 6

United States v. American Freightways, 352 U. S. 1020... 4

Statutes:

Interstate Commerce Act, Part II, 49 Stat. 543 as amended:

Sec. 203 (a), 49 U. S. C. 303 (a)..... 2, 5

Sec. 206 (a), 49 U. S. C. 306 (a)..... 4

Sec. 222 (a), 49 U. S. C. 322 (a)..... 2, 3, 4, 5, 6

1 U. S. C. 1..... 3, 4, 5

18 U. S. C. 835..... 2, 3, 4, 6

(1)

In the Supreme Court of the United States

OCTOBER TERM, 1957

No. —

UNITED STATES OF AMERICA, APPELLANT

v.

A & P TRUCKING COMPANY

No. —

UNITED STATES OF AMERICA, APPELLANT

v.

HOPLA TRUCKING COMPANY

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW JERSEY

JURISDICTIONAL STATEMENT

OPINIONS BELOW

The district court wrote no opinions. The orders dismissing the informations are set forth in the Appendix, *infra*, pp. 8-10.

JURISDICTION

On November 14, 1957, the district court dismissed the information in each of the above cases on the ground that, under the statutes involved, a partner-

ship, as an entity, is not subject to criminal liability. Notices of appeal to this Court were filed in the district court on December 9, 1957. The jurisdiction of this Court to review on direct appeal judgments dismissing the informations, based on a construction of the statutes on which the informations were founded, is conferred by 18 U. S. C. 3731.

STATUTES INVOLVED

The Interstate Commerce Act, Part II, 49 Stat. 543, as amended, provides in pertinent part:

Section 222 (a) [49 U. S. C. 322 (a)]:

Any person knowingly and willfully violating any provision of this part, or any rule, regulation, requirement, or order thereunder, or any term or condition of any certificate, permit, or license, for which a penalty is not otherwise herein provided, shall, upon conviction thereof, be fined not more than \$100 for the first offense and not more than \$500 for any subsequent offense. Each day of such violation shall constitute a separate offense.

Section 203 (a) [49 U. S. C. 303 (a)]:

As used in this part—

(1) the term "person" means any individual, firm, copartnership, corporation, company, association, or joint-stock association; and includes any trustee, receiver, assignee, or personal representative thereof.

18 U. S. C. 835 provides in pertinent part:

The Interstate Commerce Commission shall formulate regulations for the safe transportation within the limits of the jurisdiction of the United States of explosives and other dan-

gerous articles, * * * which shall be binding upon all common carriers engaged in interstate or foreign commerce which transport explosives or other dangerous articles by land * * *.

Whoever knowingly violates any such regulation shall be fined not more than \$1,000 or imprisoned not more than one year, or both * * *.

1 U. S. C. 1 provides in pertinent part:

In determining the meaning of any Act of Congress, unless the context indicates otherwise—

the words "person" and "whoever" include corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals;

QUESTION PRESENTED

Whether a partnership, as a legal entity, is subject to criminal liability under 18 U. S. C. 835 and 49 U. S. C. 322 (a).

STATEMENT

The information against the A & P Trucking Company, a partnership, charged the partnership, in count (1), with an offense under 18 U. S. C. 835 by the transportation of dangerous articles in a manner violating regulations of the Interstate Commerce Commission; in count (2), with a violation of 49 U. S. C. 322 (a) and a regulation of the Commission, in that the company permitted the operator to drive without having been physically examined and certified as meeting minimum physical requirements; in count (3), with a violation of 49 U. S. C. 322 (a) and a regulation of the Commission by failing to equip a truck

with a fire extinguisher; and in counts (4)-(35), with various operations as a common carrier without a certificate of convenience and necessity, in violation of 49 U. S. C. 306 (a) and 322 (a).¹

The two-count information against the Hopla Trucking Company, a partnership, charged the partnership, as an entity, with offenses under 18 U. S. C. 835 in that it transported flammable liquid by motor vehicle in a manner violating I. C. C. regulations.

The district court dismissed each of the informations on the ground that the partnership entity was not subject to criminal liability.

THE QUESTION IS SUBSTANTIAL

The basic question presented—whether a partnership may be subject to criminal liability for violations requiring an element of *scienter*—was before this Court in *United States v. American Freightways*, 352 U. S. 1020. In that case, an equally divided Court affirmed a district court judgment which had dismissed an information under 18 U. S. C. 835 (*supra*, p. 2), on the ground that a partnership, as such, is not subject to criminal liability. As to violations under 18 U. S. C. 835, the issue here, as it was in *American Freightways*, is whether Congress, in using the phrase “[w]hoever knowingly violates,” could and did cover partnerships.² As to those counts in the information against the A & P Trucking Company

¹ The first count, charging a violation of 18 U. S. C. 835, also charged the driver of the truck as an aider and abettor.

² A definition of “whoever” is not contained in 18 U. S. C. 835, but appears in 1 U. S. C. 1 (*supra*, p. 3). That definition embraces partnerships.

which charge violations punishable under Section 222 (a) of Part II of the Interstate Commerce Act (*supra*, p. 2), the issue of partnership liability is even more sharply drawn. The prohibitions of Section 222 (a) run against "any person," and the definition section of Part II, Section 203 (a) (*supra*, p. 2), specifically defines person, for the purposes of Part II, as including a partnership. In substance, therefore, the decision below holds that it is *beyond the power* of Congress to make a partnership entity criminally liable for violations involving *scienter*.

We believe, on the contrary, that a partnership, like a corporation, may be charged by the legislature with responsibility for the knowing acts of its agents, committed in the course of the business, and that the partnership treasury (again, like that of the corporation) may be subjected to a fine for the commission of commercial or so-called "public welfare" offenses.

This Court, even without the benefit of provisions akin to 1 U. S. C. 1 and Section 203 (a) (1) of the Interstate Commerce Act, held, in *United States v. Adams Express Co.*, 229 U. S. 381, that Section 10 of the Interstate Commerce Act, which made express companies guilty of a misdemeanor for violations of the Act, applied to an express company organized as a joint stock association, rather than as a corporation. The Court noted that, since it was not doubted that the company was subject to the regulations, "it is reasonable to suppose that the same words are intended to impose upon them the penalty inflicted on common carriers in case those duties are not performed" (229 U. S. at 389). Here, also, the regula-

tions (violations of which are punishable either under 18 U. S. C. 835 or 49 U. S. C. 322 (a)) are binding upon all common carriers, including those organized as partnerships. In the *Adams Express Co.* case, the court entertained no doubt of the power of Congress to "charge the partnership assets with a liability and to personify the company so far as to collect a fine by a proceeding against it by the company name" (229 U. S. at 390). That is what Congress has done by the statutes here involved.

Since many carriers, particularly carriers by motor, operate in partnership form, it is important to the enforcement of the I. C. C. regulatory system that the questions here presented be resolved by the full Court. Moreover, the holding that, even where Congress has expressly defined person to include a partnership, the entity may not be subject to criminal liability, is important in many other regulatory areas.³

³ There are scores of cases—although they are largely unreported—in which partnerships, as such, have been fined for violation of federal regulatory acts. In the Reply Brief for the United States filed in the *American Freightways* case (October Term, 1956, No. 265), we referred the Court to a considerable number of such cases, arising under the following statutes: Agricultural Marketing Agreement Act; Part II of the Interstate Commerce Act; Federal Food, Drug, and Cosmetic Act; Meat Inspection Act; Federal Seed Act; Animal Quarantine laws; Connally "Hot Oil" Act. We also pointed out that we knew of no case, prior to the district court's *American Freightways* decision, in which a criminal proceeding under a federal regulatory statute, brought against a partnership, failed because the partnership was not deemed suable.

CONCLUSION

It is respectfully submitted that the Court should note jurisdiction of these appeals.

J. LEE RANKIN,
Solicitor General.

RUFUS D. McLEAN,
Acting Assistant Attorney General.

BEATRICE ROSENBERG,
Attorney.

JANUARY 1958.

APPENDIX

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

Criminal No. 252-56

UNITED STATES OF AMERICA

v.

**A & P TRUCKING CO., A PARTNERSHIP COMPOSED OF
ALEX. SCHUB, ALDO IAFRATE, AND ARTHUR CLOUGH,
AND SOL LIEBMAN, DEFENDANTS**

This matter having come before the Court upon motion by the defendant A & P Trucking Co., a partnership, Anthony J. Cioffi, Esquire, appearing for the defendant, and Frederic C. Ritger, Jr., Esquire, Assistant United States Attorney, appearing for the government; and it appearing that the United States Attorney has charged the A & P Trucking Co., a partnership, as the defendant in a criminal information setting forth violations of regulations of the Interstate Commerce Commission; and the Court having decided that the defendant partnership as an entity is not subject to criminal liability under the section set forth, it is on this 13th day of November, 1957,

ORDERED that the criminal information filed with the Clerk of this Court on July 5, 1956, be and the same is hereby dismissed.

/s/ **WILLIAM F. SMITH**
United States District Judge.

We consent to the form of the foregoing Order.

/s/ **AUGUST W. HECKMAN**
August W. Heckman
Attorney for Defendant.

/s/ **ANTHONY J. CIOFFI**
Anthony J. Cioffi
(Of Counsel).

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
Criminal No. 261-56
UNITED STATES OF AMERICA
v.

HOPLA TRUCKING COMPANY, A PARTNERSHIP COMPOSED
OF WILLIAM LEVINE AND MELVIN ULRICH

This matter having come before the Court upon motion by the defendant, Hopla Trucking Company, a partnership, Anthony J. Cioffi, Esquire, appearing for the defendant, and Frederic C. Ritger, Jr., Esquire, Assistant United States Attorney, appearing for the government; and it appearing that the United States Attorney has charged the Hopla Trucking Company, a partnership, as the defendant in a criminal information setting forth violations of regulations of the Interstate Commerce Commission; and the Court having decided that the defendant partnership as an entity is not subject to criminal liability under

the section set forth, it is on this 13th day of November, 1957,

ORDERED that the criminal information filed with the Clerk of this Court on July 6, 1956, be and the same is hereby dismissed.

/s/ **WILLIAM F. SMITH**
United States District Judge.

We consent to the form of the foregoing Order.

/s/ **AUGUST W. HECKMAN**
August W. Heckman
Attorney for Defendant.

/s/ **ANTHONY J. CIOFFI**
Anthony J. Cioffi
(Of Counsel).